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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.152 OF 2016

Shraddha Sandeep Vengurlekar & Ors.

...Petitioners

vs

Raigad Zilla Parishad and Ors.

...Respondents

.....

Mr. Avinash K. Jalisatgi, a/w. Mr. Ratnesh R. Mishra, for the Petitioners.

Mr. Gavnekar Chidambar Ganesh, for Respondent No.1.

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CORAM : S.C. GUPTE, J.

DATED: MARCH 21, 2016

P.C. :

. The writ petition challenges the original and revisional orders passed respectively by the Labour Court, Mahad and the Industrial Court, Thane on the Petitioners' complaint under the Maharashtra Recognition of Trade Unions and Provisions of Unfair Labour Practices Act, 1971 (MULP Act). The Petitioners were both appointed to the posts of Peons with the first Respondent Zilla Parishad. Advertisement for the post of Peons produced by the Petitioners themselves indicates that there was one post each for deaf and dumb and physically handicapped categories from out of total number of 30 posts of peons. The first Petitioner belongs to the category of physically handicapped, whereas the second Petitioner belongs to the category of deaf and dumb. The select list and wait list respectively prepared for the categories of physically handicapped and deaf and dumb indicate

that there was one candidate each selected for appointment, whereas the two Petitioners were placed in the wait lists for their respective categories. After the Petitioners were appointed to the posts of Peons in their respective categories on temporary appointments on probation, it was realised by the Respondent Zilla Parishad that the selected candidates in the categories of both physically handicapped and deaf and dumb were actually appointed for the posts and that there being only one post respectively for the categories of physically handicapped and deaf and dumb, the appointments of both the Petitioners in addition to the selected candidates, who were already appointed, were illegal and in breach of the Government Resolution of 17 March 2007. (This G.R. provides that in the event selected candidates are not available for the advertised posts, candidates in the wait list will be appointed according to the order of merit.) After this mistake was noticed by the first Respondent Zilla Parishad, the services of both the Petitioners were terminated by orders passed by the Zilla Parishad on 19 December 2012. These orders were taken before the Labour Court alleging a complaint under Item 1 of Schedule IV of the Mulp Act. Both the Trial Court as well as the Revisional Court, to which a revision was carried from the impugned order of the trial court, held that there was no unfair labour practice in respect of termination of services of the Petitioners.

2. Item No.1 of Schedule IV is in respect of discharge or dismissal of an employee by way of victimisation or not in good faith or in colourable exercise of the employer's rights or for patently false reasons or in utter disregard of the principles of natural justice or a misconduct, minor or technical. These are the provisions, which are

said to be attracted in the complaint of the Petitioners. The record makes it clear, and it is not really a matter of dispute, that the Petitioners' services were terminated on the ground that they were appointed, in the first place, illegally though selected candidates for their respective posts were available and also appointed. Since the original appointments themselves, which were in any event temporary, were erroneously and illegally made, the Respondent Zilla Parishad duly terminated the Petitioners' services. The discharge or dismissal of the Petitioners cannot be said to be either by way of victimization or suffering from bad faith or in colourable exercise of the employer's rights. It also cannot be said that such discharge or dismissal is on account of patently false reasons or in utter disregard of the principles of natural justice or with undue haste. There is also no question of any misconduct, minor or technical, leading to such discharge or dismissal. There is a concurrent finding by two courts below that the services of the Petitioners were terminated by reason of illegality involved in their appointments in the first place. There is, thus, no case of unfair legal practice, as alleged by the Petitioners.

3. Learned Counsel for the Petitioners relied on the case of **Sunil Tulshiram Gavali v. Education Officer (Primary Section)**¹. This was a case involving the same Zilla Parishad. The facts of the case are clearly distinguishable from the facts of the present case. In that case, the appellants before the Court were appointed to permanent posts and held such posts for more than 17 years. The controversy before the Supreme Court in that case concerned the appointments made in the

¹ Civil Appeal Nos.10175-78 of 2013 dated 11 November 2013, Coram: G.S. Singh & C. Nagappan, JJ.)

case of the petitioners from the waiting list without complying with the requirement of consent of the District Selection Committee. The Supreme Court noticed that the Division Bench of our Court had overlooked the fact that the appellants were, in no way, responsible for the alleged violation of the G.R. or non-compliance of the requirement of consent of the District Selection Committee. The Supreme Court was of the view that several important questions raised by the appellants for assailing the original orders of the Zilla Parishad, namely, the fact that prior to their appointment as Extension Officers (Education), the appellants were having substantive appointments as Assistant Teacher, etc. with the same Zilla Parishad and that, at the time of issuance of show cause notice, the appellants had already become overage and were no longer eligible for any other employment, were not considered by the Division Bench. In the present case, appointment of the Petitioners was illegal, since despite there being only one post each for the two categories and both posts being already filled with candidates from the select lists, the Petitioners, who were placed in the wait lists, could not have been appointed. Besides, the appointments were temporary. These facts are clearly distinguishable from the facts in the case of **Sunil Tulshiram Gavali** (supra). The judgment of the Supreme Court, accordingly, has no application to the facts of our case.

4. There is, thus, no merit in the petition. The petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)